



June 25, 1999

Ms. Lillian Guillen-Graham
Assistant City Attorney
City of Mesquite
Box 850137
Mesquite, Texas 75185-0137

OR99-1775

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125328.

The City of Mesquite (the "city") received a request for the following information:

1. An audio cassette tape copy of radio transmissions on Mesquite Police Radio Channel A and B on March 3, 1999 between 10:00 A.M. and 11:00 A.M.
2. A printed copy of all car to car, (mobile to mobile) Mobile Data Terminal (MDT) messages sent on March 3, 1999 between 10:00 A.M. and 11:00 A.M.
3. A printed copy of all Mobile Data Terminal (MDT) messages sent or received by Sgt. David Valencia (Unit 539) on March 3, 1999 between 10:00 A.M. and 11:00 A.M.

You contend that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

First, you contend that section 552.103 excepts all of the requested information from disclosure. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that

(1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). You state that "[a]s long as the statute of limitations has not expired on any of the activities recorded in the enclosed documents, there is the potential for criminal litigation which the City may be a party to [sic]." This statement does not satisfy the city's burden under section 552.103(a). Therefore, we conclude that the requested information is not excepted from disclosure under section 552.103(a).

Next, you contend that section 552.108(b) excepts all of the requested information from disclosure. Section 552.108(b) provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the

requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you make some general allegations, you do not explain how releasing the requested information would interfere with law enforcement or prosecution. A governmental body claiming section 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You do not specifically contend that any of the requested information relates to a closed case that did not result in conviction or deferred adjudication. Lastly, you do not assert that the requested information was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See* Gov't Code § 552.108(b)(3). For these reasons, we conclude that you have not met your burden of demonstrating that section 552.108(b) is applicable to the requested information. The city may not withhold any of the requested information from disclosure under section 552.108(b).

You contend that portions of the requested information are excepted from disclosure pursuant to section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]


We have marked the types of information that are excepted from disclosure pursuant to section 552.130 (see green tab). The city must withhold these types of information from disclosure.

Finally, we note that some of the information at issue is excepted from disclosure under section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Except for CHRI and information protected by section 552.130, the city must release the information at issue to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125328

Encl. Submitted documents and tapes

cc: Mr. Michael Rickman
CLEAT
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Mesquite, Texas 75150
(w/o enclosures)